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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 EDMOND NEAL,
11 Plaintiff,
12 vs.

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14 MATTHEW SCHUPPEL COMPANY,
15 LLC; and DOES 1 through 10,
16 Defendants.
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Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR
VIOLATION OF:

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT, CAL CIV. CODE §§ 51 -
52 et seq.;
3. CALIFORNIA'S DISABLED
PERSONS ACT, CAL CIV. CODE §54 et
seq.
4. CALIFORNIA HEALTH & SAFETY
CODE § 19955, et seq.
5. NEGLIGENCE

24
25 Plaintiff EDMOND NEAL ("Plaintiff") complains of Defendants MATTHEW
26 SCHUPPEL COMPANY, LLC; and DOES 1 through 10 ("Defendants") and alleges as
27 follows:
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PARTIES

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2 1. Plaintiff is a California resident with a physical disability. Plaintiff is an
3 amputee below his right knee. Plaintiff requires the use of a wheelchair at all times when
4 traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a deli and café business
7 establishment (“Business”) located at or about 2400 Main St., Santa Monica, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 to 10, and each of them, are unknown to Plaintiff, who
10 therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court
11 to amend this Complaint when the true names and capacities have been ascertained.
12 Plaintiff is informed and believes and, based thereon, alleges that each such fictitiously
13 named Defendants are responsible in some manner, and therefore, liable to Plaintiff for
14 the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*)
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1 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same nucleus of operating facts, are also brought under California law,
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
4 54, 54., 54.3 and 55.

5 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6 9. Venue is proper in this court pursuant to 28 USC §1391(b). The real
7 property which is the subject of this action is located in this district, Los Angeles County,
8 California, and that all actions complained of herein take place in this district.

9 **FACTUAL ALLEGATIONS**

10 10. In or about January of 2023, Plaintiff went to the Business.

11 11. The Business is a deli and café business establishment, open to the public, a
12 place of public accommodation and affects commerce through its operation. Defendants
13 provide restrooms for customers.

14 12. While attempting to enter the Business during each visit, Plaintiff personally
15 encountered a number of barriers that interfered with his ability to use and enjoy the
16 goods, services, privileges, and accommodations offered at the Business.

17 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
18 included, but were not limited to, the following:

19 a. The restroom was not accessible and violated various American with
20 Disability Act Accessibility Guideline ("ADAAG") requirements,
21 including but not limited to inadequate size of access compartments.

22 (i) grab bars;

23 (ii) hand dryer;

24 (iii) toilet paper dispenser;

25 (iv) door lock;

26 (v) door handle; and

27 (vi) toilet flush

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- 1 a. A failure to make reasonable modification in policies, practices, or
2 procedures, when such modifications are necessary to afford such
3 goods, services, facilities, privileges, advantages, or accommodations
4 to individuals with disabilities, unless the entity can demonstrate that
5 making such modifications would fundamentally alter the nature of
6 such goods, services, facilities, privileges, advantages, or
7 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to take such steps as may be necessary to ensure that no
9 individual with a disability is excluded, denied services, segregated or
10 otherwise treated differently than other individuals because of the
11 absence of auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would fundamentally alter the
13 nature of the good, service, facility, privilege, advantage, or
14 accommodation being offered or would result in an undue burden. 42
15 U.S.C. § 12182(b)(2)(A)(iii).
- 16 c. A failure to remove architectural barriers, and communication barriers
17 that are structural in nature, in existing facilities, and transportation
18 barriers in existing vehicles and rail passenger cars used by an
19 establishment for transporting individuals (not including barriers that
20 can only be removed through the retrofitting of vehicles or rail
21 passenger cars by the installation of a hydraulic or other lift), where
22 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23 d. A failure to make alterations in such a manner that, to the maximum
24 extent feasible, the altered portions of the facility are readily
25 accessible to and usable by individuals with disabilities, including
26 individuals who use wheelchairs or to ensure that, to the maximum
27 extent feasible, the path of travel to the altered area and the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with
2 disabilities where such alterations to the path or travel or the
3 bathrooms, telephones, and drinking fountains serving the altered
4 area are not disproportionate to the overall alterations in terms of cost
5 and scope. 42 U.S.C. § 12183(a)(2).

6 21. The side wall grab bar shall be 42 inches (1065 mm) long minimum, located
7 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm)
8 minimum from the rear wall. 2010 ADA Standards § 604.5.1. The rear wall grab bar
9 shall be 36 inches (915 mm) long minimum and extend from the centerline of the water
10 closet 12 inches (305 mm) minimum on one side and 24 inches (610 mm) minimum on
11 the other side. 2010 ADA Standards § 604.5.2

12 22. Here, Defendants failed to properly install the rear grab bar as required by
13 the Standards.

14 23. The highest operable part of controls, dispensers, receptacles, and other
15 operable equipment shall be placed within at least one of the reach ranges specified in
16 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be
17 mounted no less than 15 in (380 mm) above the floor. 1991 ADA Standards § 4.27.3

18 24. Here, Defendants failed to properly install the hand dryer as it was installed
19 too high.

20 25. Toilet paper dispensers shall comply with 309.4 and shall be 7 inches (180
21 mm) minimum and 9 inches (230 mm) maximum in front of the water closet measured to
22 the centerline of the dispenser. The outlet of the dispenser shall be 15 inches (380 mm)
23 minimum and 48 inches (1220 mm) maximum above the finish floor and shall not be
24 located behind grab bars. Dispensers shall not be of a type that controls delivery or that
25 does not allow continuous paper flow. 2010 ADA Standards § 604.7.

26 26. Here, Defendants failed to install a toilet paper dispenser in compliance with
27 the Standards.

1 27. Handles, pulls, latches, locks, and other operating devices on accessible
2 doors shall have a shape that is easy to grasp with one hand and does not require tight
3 grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms,
4 push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors
5 are fully open, operating hardware shall be exposed and usable from both sides.
6 Hardware required for accessible door passage shall be mounted no higher than 48 in
7 (1220 mm) above finished floor. 1991 ADA Standards § 4.13.9.

8 28. Here, Defendants failed to provide accessible handle and locks on the
9 restroom door. The door consisted of a latch lock and a round door handle that were
10 difficult to grasp and operate without a proper handle.

11 29. Toilet flush controls shall be hand operated or automatic. Hand operated
12 flush controls shall comply with 309. Flush controls shall be located on the open side of
13 the water closet. 2010 ADA Standards § 604.6.

14 30. Here, Defendants failed to install a proper flush control as it was not located
15 on the open side of the water closet.

16 31. A public accommodation shall maintain in operable working condition those
17 features of facilities and equipment that are required to be readily accessible to and usable
18 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

19 32. By failing to maintain the facility to be readily accessible and usable by
20 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
21 regulations.

22 33. The Business has denied and continues to deny full and equal access to
23 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
24 discriminated against due to the lack of accessible facilities, and therefore, seeks
25 injunctive relief to alter facilities to make such facilities readily accessible to and usable
26 by individuals with disabilities.

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SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

34. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

35. California Civil Code § 51 states, “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

36. California Civil Code § 52 states, “Whoever denies, aids or incites a denial, or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

37. California Civil Code § 51(f) specifies, “a violation of the right of any individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.”

38. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, facilities, privileges, or services by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. Defendants have discriminated against Plaintiff in violation of California Civil Code §§ 51 and 52.

39. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA DISABLED PERSONS ACT

40. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

41. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

42. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 54, 54.1, and 54.2.

43. California Civil Code § 54(d) specifies, “a violation of the right of an individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also constitute a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

1 44. The actions and omissions of Defendants alleged herein constitute a denial
 2 of full and equal accommodation, advantages, and facilities by physically disabled
 3 persons within the meaning of California Civil Code § 54. Defendants have
 4 discriminated against Plaintiff in violation of California Civil Code § 54.

5 45. The violations of the California Disabled Persons Act caused Plaintiff to
 6 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
 7 statutory damages as specified in California Civil Code §55.56(a)-(c).

8 **FOURTH CAUSE OF ACTION**

9 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

10 46. Plaintiff incorporates by reference each of the allegations in all prior
 11 paragraphs in this complaint.

12 47. Plaintiff and other similar physically disabled persons who require the use of
 13 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
 14 such facility is in compliance with the provisions of California Health & Safety Code §
 15 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
 16 provisions of California Health & Safety Code § 19955 et seq.

17 48. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
 18 that public accommodations or facilities constructed in this state with private funds
 19 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
 20 Title 1 of the Government Code. The code relating to such public accommodations also
 21 require that “when sanitary facilities are made available for the public, clients, or
 22 employees in these stations, centers, or buildings, they shall be made available for
 23 persons with disabilities.

24 49. Title II of the ADA holds as a “general rule” that no individual shall be
 25 discriminated against on the basis of disability in the full and equal enjoyment of goods
 26 (or use), services, facilities, privileges, and accommodations offered by any person who
 27 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
 28 Further, each and every violation of the ADA also constitutes a separate and distinct

1 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
2 award of damages and injunctive relief pursuant to California law, including but not
3 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

4 **FIFTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 50. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 51. Defendants have a general duty and a duty under the ADA, Unruh Civil
9 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
10 to the Plaintiff.

11 52. Defendants breached their duty of care by violating the provisions of ADA,
12 Unruh Civil Rights Act and California Disabled Persons Act.

13 53. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
14 has suffered damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
17 Defendants as follows:

18 1. For preliminary and permanent injunction directing Defendants to comply
19 with the Americans with Disability Act and the Unruh Civil Rights Act;

20 2. Award of all appropriate damages, including but not limited to statutory
21 damages, general damages and treble damages in amounts, according to proof;

22 3. Award of all reasonable restitution for Defendants' unfair competition
23 practices;

24 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
25 action;

26 5. Prejudgment interest pursuant to California Civil Code § 3291; and

27 6. Such other and further relief as the Court deems just and proper.

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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 7, 2023

SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim
Jason J. Kim, Esq.
Attorneys for Plaintiff